

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6542 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ISMAIL FAKIR MOHAMMED SHAIKH

Versus

COMMISSIOER OF POLICE

Appearance:

MR AZIZ AN ALVI for Petitioner

MR SP DAVE Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 24/11/97

ORAL JUDGEMENT

The petitioner calls in question the legality and validity of the detention order passed by the Police Commissioner, Ahmedabad City on 7.5.1997, invoking section 3(2) of the Gujarat Prevention of Anti Social Activities Act (hereinafter referred to as the "Act").

2. Against the petitioner about 5 complaints came to be lodged before the Shahpur and Ellisbridge Police

Stations. The first complaint in the year 1993 was lodged with the Ellisbridge police station which was for the offence punishable under section 394 read with section 114 of IPC and sec. 135 of the Bombay Police Act. Rest of the complaints were filed before the Shahpur Police Station, out of which three were relating to the offence under section 379 of IPC, while the last one was with regard to the offences punishable under section 352, 506(2) read with section 114 of IPC. During the course of investigation of the above stated offences, the police realised that the petitioner was not the ordinary criminal but the habitual. He was the head strong person. As he was dangerous person, he was required to nabbed and necessary actions were also required to be taken, but by making inquiry, it was found that it would not at all possible to resort to the general laws so as to curb the subversive activities of the petitioner as those laws were sounding dull. Some statements of the persons were recorded. The police could from those statements see that the petitioner used to beat or harrase the persons or cause injury to the persons; or extort money from the shop keepers and others. Resorting to the coercive measures and putting the persons to imminent fear of violence, he caused the people to bend to his way and those who did not had to face the music or invite death warrant. Because of his anti social activities and insurmountable criminal wrongs, he was doing, the people had cultivated feeling of insecuriity. They had lost courage to resist or challenge or co-operate the police, because of impending danger to their safety, or several other dire consequences. The Police Commissioner, therefore, found considering, of course, the material placed before him, that to check the anti social activities of the petitioner, the detention order under section 3(2) of the Act was the only way out. He, therefore, passed the said order on 7.5.1997 and arrested the petitioner. At present, the petitioner is, therefore, in custody.

3. Challenging the order of detention on behalf of the petitioner, several grounds are advanced, but this application can well be disposed of dealing with the only one ground going to the root of the case and, therefore, I will not dwell upon other grounds but will confine myself to the only ground on which the petition is likely to be disposed of.

4. According to the petitioner, he is wrongly branded as habitual offender i.e. dangerous person. There was no material to brand him accordingly. The order of detention was therefore, bad in law.

5. In law, a person can be termed as a dangerous person, if he by himself or as a member of the gang or leader of the gang habitually commits or attempts to commit or abet the commission of any offence. The word "habitually" means by force of habit; on the basis of a single solitary incident, the persons cannot be branded as a dangerous person habitually or repeatedly committing the offences. In short, the inference of habit cannot be drawn from a single act. Further it may be stated that if considering the facts, it transpires that it is the matter of law and order, and not a matter of public order, the order of detention cannot be maintained.

6. Except the complaints lodged with the Ellisbridge Police Station, all other complaints are the complaints which can effectively be dealt with under the general law, because such incidents are personal and hardly have the impact disturbing public tranquility, and therefore, on the basis of those complaints, it cannot be said that this is the matter of public order and by those offences the maintenance of public order is likely to be adversely affected. The complaint for the offences under section 394 read with section 114 of IPC being the isolated incident, will not be sufficient to brand, as per law stated hereinabove, the petitioner a dangerous person. Nodoubt, the person committing robbery or decoity can hardly be effectively dealt with by the ordinary law, because in that case, on the ground of identification by and large, the prosecution has to re-treat but in that case as per the law made clear hereinabove, the detaining authority has to show that there is a reason to believe that the petitioner is habitually indulging in the activities or is likely to indulge in general wrongs. If that is not shown, and only a stray incident is brought to the notice of the court, it would not be just to conclude that the petitioner is a dangerous person. There is nothing on record giving reason to believe that the petitioner is likely to indulge in general wrongs adversely affecting public order. In that view of the matter, the petitioner, in this case cannot be branded as a dangerous person and, secondly, the case is of a law and order and not a public order.

7. In the result, the order of detention cannot be maintained. The petition is allowed. The detention order being illegal is hereby quashed. The petitioner is hereby ordered to be set at liberty if no longer required in any other matter. Rule is made absolute.
